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OCT 28 2005

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Mardh	
Application No.: 09/678,357	Group Art Unit: 1645
Filed: 10/4/2000	Examiner: J Hines
Title: Screening Method for Gastritis	Confirmation No: 4507
Attorney Docket No.: SMAR.P-001	
Customer No.: 021121	

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

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RESPONSE TO OFFICIAL ACTION

Dear Sir:

This is in response to the Office Action mailed April 28, 2005 for the above-captioned application.

Applicants request an extension of time sufficient to make this paper timely and enclose the fee. The Commissioner is authorized to charge any additional fees due to deposit account no. 15-0610.

A Notice of Appeal is being filed concurrently, since the action was made final. Applicants submit, however, the claims as pending are in form for allowance.

I hereby certify that this paper and any attachments named herein are transmitted to the United States Patent and Trademark Office, Fax number: 571-273-8300 on October 28, 2005.

Marina T. Larson  
Marina T. Larson, PTO Reg. No. 32,038

October 28, 2005  
Date of Signature

Appln No.: 09/678,357  
Amendment Dated: October 28, 2005  
Reply to Office Action of April 28, 2005

Claims 14, 15, 18, 30 and 32 stand rejected under 35 USC § 103 as obvious over the combination of Oksanen et al. and Ma et al. The references teach several tests related to gastritis, and the Examiner says that performing multiple tests is obvious. Applicants submit that this argument is inappropriate as a *per se* rule, as it is applied in this case, because it fails to consider that additional information may be obtained through multiple tests that is not available through the tests individually. For the claims as pending, however, this issue need not be reached.

Independent Claim 14 recites the steps of multiplying the level of pepsinogen I by the level of *Helicobacter pylori* antibodies to get a number, and comparing the number to a number calculated similarly for the normal population. The Examiner has not shown this step in the art, and has not even addressed the limitation in the claim, other than by arguing that calculating a ratio of indicators is obvious. Whether or not it is true that determination of a ratio between known experimental values may be generally obvious,<sup>1</sup> the same thing cannot be said concerning the product (multiplication) of two values as set forth. For example, unlike a ratio where the value of the ratio reflects which of the individual numbers is greater, the product does not provide this information. In the present case, there is nothing in the art that suggests that taking the product of any two numbers would be a desirable step, or provide information of diagnostic significance. Thus, the claimed invention, as a whole, is not rendered obvious by the cited art.

For the foregoing reasons, Applicants submit that the claims of this application are in form for allowance. Favorable reconsideration and allowance of all pending claims are therefore urged.

Respectfully submitted,



Marina T. Larson Ph.D.  
PTO Reg. No. 32,038  
Attorney for Applicant  
(970) 468-6600

Enclosure:  
Request for extension of time  
Credit card form

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<sup>1</sup> This is not conceded, since a ratio is only meaningful if the indicators are known to vary independently in different conditions. Nothing in the art cited by the Examiner shows that even a ratio would have diagnostic significance.

OCT 28 2005

PTO/SB/22 (12-04)

Approved for use through 7/31/2006. OMB 0851-0031  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<b>PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a) FY 2005</b> (Fees pursuant to the Consolidated Appropriation Act, 2005 (H.R. 4818).)		Docket Number (Optional) <b>SMAR.P-001</b>	
Application Number <b>09/878,357</b>		Filed <b>10/4/2000</b>	
For Screening Method for Gastritis			
Art Unit <b>1645</b>		Examiner <b>J Hines</b>	
This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application.			
The requested extension and appropriate non-small-entity fee are as follows (check time period desired):			
	<u>Fee</u>	<u>Small Entity Fee</u>	
<input type="checkbox"/> One month (37 CFR 1.17(a)(1))	\$120	\$60	\$ _____
<input type="checkbox"/> Two months (37 CFR 1.17(a)(2))	\$450	\$225	\$ _____
<input checked="" type="checkbox"/> Three months (37 CFR 1.17(a)(3))	\$1,020	\$510	\$ 510.00
<input type="checkbox"/> Four months (37 CFR 1.17(a)(4))	\$1,590	\$795	\$ _____
<input type="checkbox"/> Five months (37 CFR 1.17(a)(5))	\$2,160	\$1,080	\$ _____
<input checked="" type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27.			
<input type="checkbox"/> A check in the amount of the fee is enclosed.			
<input checked="" type="checkbox"/> Payment by credit card. Form PTO-2038 is attached.			
<input type="checkbox"/> The Director has already been authorized to charge fees in this application to a Deposit Account.			
<input checked="" type="checkbox"/> The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number <u>15-0610</u> . I have enclosed a duplicate copy of this sheet.			
WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.			
I am the <input type="checkbox"/> applicant/inventor			
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed (Form PTO/SB/96).			
<input checked="" type="checkbox"/> attorney or agent of record. Registration Number <u>32038</u>			
<input type="checkbox"/> attorney or agent under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____			
<u>Marina T. Larson</u>		<u>October 28, 2005</u>	
Signature		Date	
<u>Marina T. Larson, Ph.D</u>		<u>970-468-6600</u>	
Typed or printed name		Telephone Number	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.			
<input type="checkbox"/> Total of _____ forms are submitted.			

This collection of information is required by 37 CFR 1.136(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 6 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9133 (1-800-778-6843) 08888843 89678357

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PTO/SB/31 (09-04)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

# NOTICE OF APPEAL FROM THE EXAMINER TO THE BOARD OF PATENT APPEALS AND INTERFERENCES

Docket Number (Optional)  
SMAR.P-001

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope address to "Commissioner Patents, P.O. Box 1450, Alexandria, VA 22313-1450 [37 CFR 1.8(a)] on October 28, 2005

Signature Anne M Wagner

Typed or printed name Anne M Wagner

In re Application of : Mardh

Application Number  
09/678,357

Filed  
10/4/2000

For Screening Method for Gastritis

Art Unit 1645

Examiner J Hines

Applicant hereby **appeals** to the Board of Patent Appeals and Interferences from the last decision of the examiner.

The fee for this Notice to Appeal is (37 CFR 41.20(b)(1))

\$ 500.00

☒ Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee shown above is reduced by half, and the resulting fee is:

\$ 250.00

☐ A check in the amount of the fee is enclosed.

☒ Payment by credit card. Form PTO-2038 is attached.

☐ The Director has already been authorized to charge fees in this application to a Deposit Account. I have enclosed a duplicate copy of this sheet.

☒ The Director is hereby authorized to charge fees which may be required, or credit any overpayment to Deposit Account No. 15-0610. I have enclosed a duplicate copy of this sheet.

☐ A petition for an extension of time under 37 CFR 1.136(a) (PTO/SB/22) is enclosed.

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

☒ attorney or agent of record.  
Registration number 32038

☐ attorney or agent acting under 37 CFR 1.34.  
Registration number if acting under 37 CFR 1.34. \_\_\_\_\_

Marina T. Larson  
Signature

Marina T. Larson, Ph.D  
Typed or printed name

970-468-6600  
Telephone number

October 28, 2005  
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☐ \*Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 37 CFR 41.31. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14, and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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